IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 8220 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HASMUKHLAL ISHWARLAL THAKKAR

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 8220 of 2003

MR CL SONI for Petitioner No. 1

MRS ML SHAH APP for Respondent No. 1

MR MC BHATT for

MR MP PRAJAPATI for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 03/02/2005

ORAL JUDGEMENT

1. Present application is file u/s 482 of the Code of Criminal Procedure, 1973 for quashing and setting aside the criminal complaint which is registered before the J.M.F.C., Deesa for the offences u/s 420-506(2) of the I.P. Code.

2. Heard the learned advocate for the applicant, learned A.P.P. for the respondent No. 1 - State and the learned advocate for the respondent No. 2.

3. Learned advocate for the applicant mainly submitted that the applicant had become the owner of the land in question on 20-6-2002 and therefore there was no question of executing agreement to sell on 7-12-2001. It is also submitted by the learned advocate for the applicant that there is no proof of the agreement to sell. The present respondent No. 2 has adopted short-cut of filing the complaint against the applicant without availing alternate remedy available under the Civil Procedure Code. He also submitted that the averments and allegations made in the complaint are not true and are not correct and therefore the complaint filed by the respondent No. 2 against the applicant deserves to be quashed and set aside.

4. Learned advocate for the respondent No. 2 mainly submitted that the applicant had narrated before the original complaint that the land bearing S.No.119 paiki situated at village Bhoyan, Taluka Deesa is belonging to the present applicant and in presence of the brokers the land in question was sold to the present respondent No.2 for Rs.4.00 lacs. He has also submitted that the amount of Rs.4.00 lacs was paid by the respondent No. 2 to the present applicant and there is proof to that effect. He has also submitted that after receiving the amount of Rs.4.00 lacs, for considerable long time the applicant was requested to execute sale deed but the applicant under one or other pretext, was avoiding execution of the sale deed and therefore again in presence of the brokers the present applicant had promised either to return the amount of Rs.4.00 lacs or to give to the respondent No.2 the land in question. But it was subsequently came to know to the respondent No. 2 that the land in question was never belonging to the present applicant and he had falsely induced the respondent No. 2 to make payment for the land in question by giving false narration with regard to ownership of the land in question. This false inducement, narration and promise has given enough guidance but in fact it was misguidance to the respondent No.2 to make payment of Rs.4.00 lacs and the said amount

of Rs.4.00 is received by the applicant and the applicant has signed the document. Even there are witnesses who have signed the papers in respect of the payment of Rs.4.00 lacs by the respondent No.2 to the applicant and the said documents were produced before the trial Court and the trail Court has issued the summons upon recording the statement of the respondent No.2 on oath. Learned advocate for the respondent No.2 further submitted that the said documents are also produced before this Court at page Nos. 25 and 26 as Annexure-R-I to the present compilation. Even if the allegations levelled against the present applicant are taken on their face value the same constitute the offences punishable u/s 420 and 506(2) of the I.P. Code and therefore rightly the J.M.F.C., Deesa has issued process against the applicant upon recording the statement of the respondent No.2 on oath and therefore the present application may not be entertained in exercise of inherent power conferred upon this Court u/s 482 of the Code of Criminal Procedure.

5. I have perused the papers including the complaint and other documents on record as referred to hereinabove.

6. Looking to the facts and circumstances of the case and the averments made in the complaint, I see no reason to entertain this application for quashing the complaint registered before the J.M.F.C., Deesa being Criminal Case No.192 of 2003. The allegations levelled in the complaint are clear and enough which require to be investigated. The defences of the present applicants are not to be evaluated at this stage by this Court. Neither this Court has to check veracity of the allegations made in the complaint nor chances of acquittal or conviction. Enough and adequate are the provisions under the provisions of the Code of Criminal Procedure, 1973 which can be availed by the present applicant by pointing out in detail to the trial Court that the defences raised by the applicant are true and correct and the same will be evaluated by the court concerned.

7. Looking to the averments made in the complaint, if they are taken on their face value, they are clear and enough, prima facie, to bring the offences punishable u/s 420 and 506(2) of the I.P. Code much nearer to the present applicant. Therefore, I see no reason to quash and set aside the aforesaid complaint. Thus, there is no substance in this application. Therefore, the present application is dismissed. Rule is discharged. Interim relief granted earlier by this Court stands vacated.

(D.N. Patel, J.)

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